Supreme Court, U. S.
F I L E D
MAY 26 1976
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 197_
NO. 75-1714

HARPER SIBLEY, JR.

vs.

THE SUPERIOR COURT OF LOS ANGELES COUNTY

CARLSBERG MOBILE HOME PROPERTIES, LTD. -'72,

(real party in interest), Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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CARLSBERG MOBILE HOME PROPERTIES, LTD. -'72, (real party in interest), Petitioner

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

The Petitioner, Carlsberg Mobile Home Properties, Ltd. -'72, prays that a Writ of Certiorari issue to review the opinion and judgment of the Supreme Court of the State of California rendered (by a 5 to 2 majority) on March 8, 1976.

The issue is: "can a non-resident of California, who signs an agreement out of the state which causes the formation of a California Limited Partnership, constitutionally with impunity avoid the

jurisdiction of the California courts?"

OPINION BELOW

The Opinion of the Supreme Court of California is reported at 16 *Cal.*3d 442, and is attached hereto as Appendix A.

JURISDICTION

The Judgment of the Supreme Court of California was entered on March 8, 1976 (*See* Appendix A, page 1 *infra*). A petition for rehearing was denied on April 7, 1976 (*See* Appendix B *infra*). This Petition for Certiorari was filed less than 90 days from the date of the judgment aforesaid. The jurisdiction of this court is invoked under 28 *U.S.C.* §1257(3).

QUESTION PRESENTED

Real party in interest, Petitioner herein, brought suit against Harper Sibley, Jr. (hereinafter "Sibley") on his personal guarantee of certain obligations of a California Limited Partnership. Sibley brought a Motion to Quash Service of Summons and Complaint upon him on the basis that the courts of the State of California lacked jurisdiction over him. This contention was overruled by the trial court and by the California District Court of Appeal; however,

their rulings were overturned by the Supreme Court of the State of California (the Court dividing 5 Justices to 2). The question presented is:

Whether California courts may constitutionally assert jurisdiction over a non-resident individual solely by reason of his execution and alleged breach of a guaranty agreement of the obligations of a California Limited Partnership, which guaranty was a condition precedent to the formation of such partnership, and whether the non-resident guarantor, by executing such guaranty and causing it to be delivered to the real party in interest in California, thereby had sufficient contacts with the State of California so that the rendition of a judgment against him would not violate the due process clause of the 14th Amendment to the *U.S. Constitution*, Article IV, Section 1.

STATEMENT OF FACTS

The real party in interest, Petitioner, Carlsberg Mobile Home Properties, Ltd. -'72, (hereinafter "Carlsberg") is a Limited Partnership having its principal place of business in California. In December, 1973, MTA-CMHPL, Ltd. (hereinafter "MTA"), a California Limited Partnership, was formed

in California. The General Partner of MTA is Sunrise Lakes, Inc. (hereinafter "Sunrise"), a Georgia corporation, the limited partner was Carlsberg. MTA was to operate two mobile home parks in Georgia. Under the MTA California Limited Partnership Agreement, Sunrise promised to make certain monthly payments to Carlsberg in California. Sibley, a Florida resident, was one of three guarantors of Sunrise's performance of the California MTA's Limited Partnership Agreement. It can be demonstrated that, but for the execution of the Agreement by Sibley, and the delivery of that guaranty to Carlsberg in California, the California Limited Partnership would never have been formed. Sibley was not a party to the MTA California Limited Partnership negotiations. His only connection with the transaction apparent from the record was that he was a guarantor of the performance of the General Partner to the California Limited Partnership which would have not been formed but for his guaranty. Petitioner signed the Guaranty Agreement in Florida and delivered it to another Defendant, Peter Thun, to take it to California to deliver to Carlsberg so that the transaction would close. The MTA Agreement was negotiated

and executed in California. Sibley is not a resident of California, does not own any real or personal property in California, and does not have any business interests in California.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

This case raises questions important not only to California, but to all other states which have similar laws regarding jurisdiction (so-called "long arm statutes"). The true question is, are there sufficient contacts with California so it can constitutionally exercise jurisdiction over a non-resident who has caused an effect in this state by an act done elsewhere. The sufficiency of such contacts is a matter of Constitutional Law on which the Supreme Court of the United States has the final voice.

California Code of Civil Procedure Section 410.10 provides: "A court of the state may exercise jurisdiction on any basis non inconsistent with the Constitution of this state or of the United States." One of the bases of jurisdiction under this statute is that an individual may subject himself to jurisdiction of the State of California by causing an effect in the state by an act or omission done elsewhere (*See* Appendix C *infra*). It is submitted that, but for the

act of Sibley signing the guaranty and causing it to be delivered to Carlsberg in California, the California Limited Partnership would never have been formed.

Judicial jurisdiction in its broadest sense is the power of a state through any of its courts or, on occasion, through its legislative, executive or administrative bodies, to create legal interests which will be recognized and enforced in all the states. Within a state's boundaries, this power is plenary, except as may be delegated to the Federal Government by the Constitution of the United States. *Pennoyer v. Neff*, (1877) 95 U.S. 714, 722, 24 L.ed. 565. Outside the state, such power is limited to instances in which a Defendant has sufficient minimum contacts with the state that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.ed. 95. Each state has its own requirements in this regard. These requirements are usually set forth in each state's service of process statutes, and are often more stringent than those imposed by the due process clause of the United States Constitution. *Milliken v. Meyer*, (1940) 311 U.S. 457, 61 S.Ct. 339, 85 L.ed.

278. In *International Shoe Co. v. Washington*, supra, the Court decided that due process requires only that, in order to subject a Defendant to a Judgment *In Personam* if he be not present within the territory of the forum, he has had sufficient minimum contacts with the forum state so that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Id.* at 316.

A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an omission or an act done elsewhere, with respect to causes of actions arising from these effects, unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable. *Hansen v. Denckla*, (1958) 357 U.S. 235, 78 S.Ct. 1228, 2 L.ed.2d 1283; *McGee v. International Life Insurance Co.*, (1957) 335 U.S. 220, 78 S.Ct. 199, 2 L.ed.2d 223. When jurisdiction over an individual is based solely upon such act or omission, only a claim for relief arising from such act or omission may be asserted against the individual. *Ibid.* As stated in *Restatement of Conflict of Laws 2d*, Section 37 Comment a:

"A state has a natural interest in the effects of an act within its territory even though the act itself was done elsewhere. The state may exercise judicial jurisdiction on the basis of such effects over the individual who did the act, or who caused the act to be done, provided that the nature of these effects and of the individual's relationship to the state are such as to make the exercise of jurisdiction fair to the individual and reasonable from the standpoint of the international and interstate systems . . .

"There are three possible situations: (1) the act was done with the intention of causing effects in the state; (2) the act, although not done with the intention of causing effects in the state, could reasonably have been expected to do so; and (3) the act was not done with the intention of causing effects in the state and could not reasonably have been expected to do so. These three situations will be discussed in the order stated.

"The act may have been done with the intention of causing effects in the state. If so, the state may exercise the same judicial jurisdiction over the actor, or over the one who caused the act to be done, as to causes of action arising from these effects as it could have exercised if these effects

had resulted from an act done within its territory. . . ."

Here the act in question is the signing by Sibley of the guaranty of the performance of the General Partner to a California Limited Partnership and the transportation of that guaranty to California. But for the signing of the guaranty, and the delivery thereof to Carlsberg in California, the California Limited Partnership would not have been formed. It is conceded that Sibley has never been to California, and, other than some isolated instances which have no relation to the facts in the case at bar, Sibley has no other contacts with California.

The question then arises, is the fact of Sibley's signing of the guaranty in Florida and sending it to California -- which act caused the formation of the California Limited Partnership to operate two mobile home parks in Georgia -- sufficient to give the California court jurisdiction over Sibley. A trend is clearly discernable toward expanding the permissible scope of state jurisdiction over non-residents. In part, this is attributable to the fundamental

transformation of our national economy over the years. Today, many commercial transactions touch two or more states and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted across state lines. At the same time, modern transportation and communication have made it much less burdensome for a party sued to defend himself in the state where he either engages in economic activity or affects the conduct of others. Although Sibley has never been to California, this is a classic case of an act which was done outside the state of California with the express purpose of causing an act within the state and, therefore, comes within the provisions of *McGee v. International Life Insurance Company*, supra. The California Supreme Court erred when it substituted economic activity and doing business tests as the basis for jurisdiction, as the nature of Sibley's action was merely as a guarantor of the obligations of the California Limited Partnership, MTA, and a guarantor's relationship to a transaction is essentially passive. Therefore, if the principals are subject to the jurisdiction

of the California courts, as they are here, and the only party to the transaction who is not subject to California jurisdiction is Sibley, a multiplicity of suits will necessarily be incurred. This is so because the principals are not amendable to the jurisdiction of the Florida courts, where Sibley must be sued if the California courts do not have jurisdiction over him.

CONCLUSION

For these reasons, a Writ of Certiorari should issue so that the judgment of the California Supreme Court may be reviewed and determined by this court.

Respectfully submitted,

DONALD L. STONE
JOSEPH BESNAH

Counsel for Petitioner

APPENDIX A

SUPREME COURT
FILED
MAR 3 1970
G. E. BISHEL, Clerk

Deputy

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

HARPER SIBLEY, JR., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; CARLSBERG MOBILE HOME PROPERTIES LTD. - '72, Real Party in Interest.	L.A. 30496 (Super. Ct. No. WEC 36291)

This case presents the question whether California courts may constitutionally assert jurisdiction over a nonresident individual solely by reason of his execution and alleged breach of a guaranty agreement regarding payment of monies owing to a California corporation. We have concluded that, under the circumstances in the present case, the guaranty transaction was not a sufficient basis on which to sustain personal jurisdiction over the nonresident guarantor, and that accordingly his motion to quash service of summons should have been granted.

"SEE DISSENTING OPINION"

The real party in interest herein, Carlsberg Mobile Home Properties, Ltd. - '72 (hereafter Carlsberg) is a limited partnership having its principal place of business in California. In December 1973, Carlsberg formed MTA-CMHPL, LTD. (hereafter MTA), a limited partnership, in California. The general partner of MTA is Sunrise Lakes, Inc. (hereafter Sunrise), a Georgia corporation. The purpose of MTA was to operate two mobile home parks in Georgia. Under the MTA partnership agreement, Sunrise promised to make certain monthly payments to Carlsberg. Petitioner Harper Sibley, a Florida resident, was one of three guarantors of Sunrise's performance of the MTA partnership agreement.

In December 1974, Carlsberg brought an action in California against petitioner and others alleging breach of the partnership agreement by Sunrise and breach of the guaranty by petitioner and others. Petitioner was served by certified mail in Florida, made a special appearance in California, and pursuant to Code of Civil Procedure section 418.10, subdivision (a)(1), moved for an order to quash service of summons for lack of personal jurisdiction. The trial court denied the motion and petitioner seeks mandate to review and set aside the trial court's order.

(See Code Civ. Proc., § 418.10, subd. (c).)

Petitioner contends that Carlsberg has failed to meet its initial burden of showing that petitioner has the requisite minimum contacts with the State of California to justify California's assertion of jurisdiction over him. (See Buckeye Boiler Co. v. Superior Court (1969) 71 Cal.2d 893, 905, fn. 9; Arneson v. Raymond Lee Organization, Inc. (1973) 31 Cal.App.3d 991, 995.) We agree.

Petitioner was not a party to the MTA partnership agreement and took no part in its negotiation. His only connection with the transaction apparent from the record was as guarantor of the performance of a Georgia corporation. Petitioner signed the guaranty agreement in Florida and delivered it to another defendant, Peter Thun, who then took it to California. As indicated, petitioner is a resident of Florida; he has never been a resident of California, does not own any real or personal property in this state, and does not have any business interests or relations with California except as trustee of a testamentary trust owning property in Cambria, California. Sibley has not been physically present in this state since January 1973, when he was here in connection with a matter unrelated to the transactions before us.

Under Code of Civil Procedure section 410.10, a California court may exercise jurisdiction over nonresidents on any basis not inconsistent with the United States or California Constitutions. This section manifests an intent to exercise the broadest possible jurisdiction, limited only by constitutional considerations. (Buckeye Boiler Co. v. Superior Court, supra, 71 Cal.2d 893 at p. 898; Quattrone v. Superior Court (1975) 44 Cal.App.3d 296, 302.) As a general constitutional principle, a court may exercise personal jurisdiction over a nonresident individual so long as he has such minimal contacts with the state that ". . . the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (International Shoe Co. v. Washington (1945) 326 U.S. 310, 316-317, citations omitted; Cornelison v. Chaney, ante, p. 143.)

One of the recognized bases for jurisdiction in California arises when the defendant has caused an "effect" in the state by an act or omission which occurs elsewhere. (Quattrone v. Superior Court, supra, 44 Cal. App.3d 296 at p. 303; see also McGee v. International Life Ins. Co. (1957) 355 U.S. 220.) This ground for assertion of jurisdiction is discussed by the Judicial Council in its comment to section 410.10 of the Code of Civil

Procedure reprinted in West's Annotated California Codes, page 472, in the following language: "A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an omission or act done elsewhere with respect to causes of action arising from these effects, unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable. [Citations.] When jurisdiction over an individual is based solely upon such act or omission, only a claim for relief arising from such act or omission may be asserted against the individual. [Citation.]" (Italics added.)

Evidence was presented at the hearing on petitioner's motion to quash that the guaranty which petitioner executed induced Carlsberg, a California corporation, to enter into MTA, a new California limited partnership, and that Carlsberg would not have performed the MTA agreement without petitioner's guaranty. On this basis, despite petitioner's contrary assertions, the trial court could reasonably infer that the signing of the guaranty in Florida both was intended to cause and did cause an effect in California. In addition, it appears that the performance guaranteed by petitioner was the payment of certain moneys to a partnership located in California; thus, petitioner could have anticipated that the failure of this performance would have a further effect in California.

The mere causing of an "effect" in California, however, as acknowledged in the Judicial Council comment quoted above, is not necessarily sufficient to afford a constitutional basis for jurisdiction; notwithstanding this "effect," the imposition of jurisdiction may be "unreasonable." As was held in International Shoe Co. v. Washington, supra, 326 U.S. 310, a suit may not be maintained where jurisdiction offends "'traditional notions of fair play and substantial justice.'" (Id., at pp. 316-317, citations omitted.)

Subsequent to International Shoe, the federal Supreme Court has amplified the standard by which to determine whether imposition of jurisdiction is constitutionally "unreasonable." In Hanson v. Denckla (1958) 357 U.S. 235, for example, the high court held that in those cases in which jurisdiction is sought on the basis of defendant's occasional activities, ". . . it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." (Id., at p. 253.) In Buckeye Boiler, supra, we reaffirmed the necessity for such an inquiry and asked the additional question whether, considering defendant's activity, extension of jurisdiction over him would be "fair."

In the present case, the record fails to disclose that petitioner purposefully availed himself of the privilege of conducting business in California

or of the benefits and protections of California laws. Likewise, the record does not indicate that petitioner anticipated that he would derive any economic benefit as a result of his guaranty. Although petitioner may have reasonably foreseen that his execution or breach of the guaranty agreement would have some impact in this state, it does not appear that plaintiff Carlsberg assumed any obligations to petitioner which he might have sought to enforce in California. In this regard, petitioner's contacts with California seem even more minimal than those present in Belmont Industries, Inc. v. Superior Court (1973) 31 Cal.App.3d 281 (hg. den.), in which jurisdiction was found to be unreasonable; unlike the present case, in Belmont, the nonresident defendant, which had negotiated and contracted with a California corporation for the purchase of certain drafting services, could have sought to enforce its contract in the California courts.

The present case is distinguishable from those recent California cases upholding jurisdiction over nonresident defendants who seek or obtain significant benefits from this activity in California. For example, in Buckeye Boiler Co. v. Superior Court, supra, substantial business was generated in this

state which benefited the party over which jurisdiction was sought; in Michigan Nat. Bank v. Superior Court (1972) 23 Cal.App.3d 1, goods purchased in California were financed by the nonresident defendant; in National Life of Florida Corp. v. Superior Court (1971) 21 Cal.App.3d 281, contract negotiatons by the parties occurred in California concerning the sale of shares of stock to California residents by the nonresident defendants; and in Quattrone v. Superior Court, supra, 44 Cal.App.3d 296, it was alleged that the nonresident defendant was involved in a conspiracy to defraud a California corporation for his own profit by submitting falsified financial records to this corporation. By contrast, in the present case, while other parties involved in this action had considerable contacts with California, there is no indication that petitioner intended to conduct business or in any other way directly or indirectly gain from dealings in this state; the purpose of other parties cannot be imputed to petitioner for the purpose of assuming personal jurisdiction over him.

The United States Supreme Court has given further guidance in this area by indicating in McGee v. International Life Ins. Co., supra, 355 U.S. 220, that whether or not a state has passed special legislation relating to the subject matter of the action is significant in determining the reasonableness of jurisdiction over an out-of-state defendant. In McGee, the court

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uphald the jurisdiction of a California court over an out-of-state insurance company, justifying its ruling in part on the fact that California had enacted special legislation manifesting an exceptional interest in regulating activities by foreign insurance companies. (Id., at pp. 221-223.) Similarly in Quattrone v. Superior Court, supra, 44 Cal.App.3d 296, jurisdiction over a nonresident defendant was upheld by a Court of Appeal of this state largely because the end result of defendant's alleged conspiratorial conduct was the issuance of shares of stock, a subject of special California regulation. (Id., at pp. 306-307.)

In the matter before us a California limited partnership, in reliance upon the personal guaranty by a Florida resident, contributed its holdings of Georgia land to a new limited partnership for the purpose of acquiring and operating mobile home parks in Georgia. There are no aspects of this arms-length transaction which are subject to special regulation in California or in which California has otherwise manifested exceptional interest.

Thus, we conclude that petitioner's relationship to California, and the effects thereby caused in California, make the exercise of jurisdiction unreasonable in the present case.

Because petitioner's contacts with California are insufficient to justify jurisdiction, it is not

necessary to undertake the additional process of balancing the inconvenience of defending the action in this state against the interests of plaintiff in suing locally and of the state in assuming jurisdiction. (See Cornelison v. Chaney, supra, pp. 150-151; Buckeye Boiler Co. v. Superior Court, supra, 71 Cal.2d 893 at p. 899.)

We note, however, that the present litigation involves the performance of a limited partnership agreement in Georgia, and of petitioner's own agreement to guarantee the performance of a Georgia corporation. Thus, Georgia would appear to have jurisdiction over the entire controversy; at the least, the action against petitioner can be conveniently litigated there or in Florida where petitioner resides.

Let a peremptory writ of mandate issue.

RICHARDSON, J.

WE CONCUR:

WRIGHT, C.J.
McCOMB, J.
SULLIVAN, J.
CLARK, J.

C O P Y

SIBLEY v. SUPERIOR COURT OF LOS ANGELES

L.A. 30496

DISSENTING OPINION BY MOSK, J.

I dissent.

The issue is whether petitioner has the requisite minimum contacts with the State of California to justify California courts exercising jurisdiction over him. (Buckeye Boiler Co. v. Superior Court (1969) 71 Cal.2d 893, 905, fn. 9.)

In denying petitioner's motion to quash, the trial court relied upon the following facts to justify retaining the case in California, rather than to compel the litigants to travel across the continent to the eastern seaboard for an adjudication of their rights. (Tiffany Records, Inc. v. H. B. Krupp Distributors, Inc. (1969) 276 Cal.App.2d 610, 615.)

Carlsberg Mobile Home Properties, Ltd.-'72 is a limited partnership formed in California pursuant to the provisions of the California Corporations Code.

The general partner of the limited partnership is Carlsberg Resources Corporation, a California corporation.

Both the limited partnership and the corporate general partner maintain their business and principal office

in the County of Los Angeles, State of California. Neither entity maintains an office in any other state.

Carlsberg, pursuant to an agreement, formed a limited partnership with Sunrise Lakes, Inc., a Georgia corporation as the general partner, to acquire and operate two mobile home parks in Georgia. This entity, known in short as MTA, was created in California, in accordance with provisions of the California Corporations Code.

The agreement upon which the lawsuit is based was negotiated and executed in California.

The deeds transferring to MTA title to the Georgia mobile home parks were executed in California.

The agreement contemplated that payments thereunder were to be made in California.

The guarantee of petitioner was an essential consideration without which the MTA agreement would not have been executed in California.

Petitioner had knowledge that he was guaranteeing an obligation executed in California and payable in California, for the written guarantee of petitioner was obtained by, and given to, codefendant Peter Thun for delivery to plaintiffs in California.

The guarantee was in fact delivered to plaintiffs in California.

The transaction became effective only upon delivery of the guarantee in California. This is precisely the type of act, originally performed elsewhere but causing a specific effect in California, contemplated by Quattrone v. Superior Court (1975) 44 Cal.App.3d 296, 303.

This litigation results from the claim that the general partner, and consequently its guarantor, has breached the terms of the MTA limited partnership agreement executed in California.

The foregoing facts--singly perhaps but in combination certainly--constitute substantially more than the minimum contacts required for jurisdiction over the parties by California courts. The trial court so found. A unanimous Court of Appeal approved. I agree with their assessment of the facts.

I would deny the writ.

MOSK, J.

I CONCUR:

TOBRINER, J.

APPENDIX B

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

APR 7 1976

I have this day filed Order

REHEARING DENIED

In re: LA No. 30496
Sibley
vs.
Superior Court, LA

Respectfully,

G. E. BISHEL
Clerk

99328-877 11-75 3M CSP

APPENDIX C

EXCERPTS FROM

1969 REPORT OF THE CALIFORNIA

JUDICIAL COUNCIL TO THE GOVERNOR

AND THE LEGISLATURE

Code of Civil Procedure §410.10 provides:

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

APPROVED JUDICIAL COUNCIL COMMENT

Superseded CCP Sections: §§ 411–413, 417.

Section 410.10 permits California courts to exercise judicial jurisdiction on any basis not inconsistent with the state or federal Constitutions. This authorization continues the California law on jurisdiction over foreign corporations and reestablishes the prior law that once governed nonresident individuals.

All the recognized bases of judicial jurisdiction are included. In the case of natural persons, such bases currently include presence, domicil, residence, citizenship, consent, appearance, doing business in a state, doing an act in a state, causing an effect in a state by an act or omission elsewhere, ownership, use or possession of a thing in a state, as well as other relationships to a state.

In the case of corporations and unincorporated associations (including partnerships), such bases currently include incorporation or organization in a state, consent, appointment of an agent, appearance, doing business in a state, doing an act in a state, causing an effect in a state by an act or omission elsewhere, ownership, use or possession of a thing in a state, and other relationships to a state. Each of these bases is discussed in detail below.

Other recognized bases include: (1) Judicial jurisdiction over the interests of persons in things in this state, such as land, chattels, documents, intangibles, shares in a corporation, and titles. (2) Judicial jurisdiction to apply to the satisfaction of a claim interests in a thing that is subject to the court's judicial jurisdiction. (3) Judicial jurisdiction for divorce of persons one or both of whom are domiciled in this state or have such other relationship to this state as would make it reasonable for the state to dissolve their marriage. (4) Judicial jurisdiction over other proceedings relating to status, such as judicial separation, annulment, support, adoption, or custody, of persons who are domiciled or present in this state, or have such other relationship to this state as would make it reasonable for the state to hear and determine such action. . . .

BASES OF JUDICIAL JURISDICTION OVER INDIVIDUALS

A state has power to exercise judicial jurisdiction over an individual on one or more of the following bases: (1) Presence; (2) Domicil; (3) Residence; (4) Nationality or citizenship; (5) Consent; (6) Appearance in an action; (7) Doing business in the state; (8) An act done in the state; (9) Causing an effect in the state by an act done elsewhere; (10) Ownership, use or possession of a thing in the state; (11) Other relationships to the state which make the exercise of judicial jurisdiction reasonable. (RESTATEMENT (SECOND), § 27; *see* UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT §§ 1.02, 1.03 (hereinafter cited as UNIFORM ACT); 44 Cal.L.Rev. 737; 48 Cal.L.Rev. 295; Von Mehren and Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis* (1966) 79 Harv.L.Rev. 1121; *Developments in the Law—State-Court Jurisdiction* (1960) 73 Harv. L.Rev. 909; 5 Hastings L.J. 191; 27 So.Cal.L.Rev. 465; 1 U.C.L.A. L.Rev. 113.)...

(9) CAUSING EFFECT IN STATE BY ACT OR OMISSION ELSEWHERE

A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an omission or act done elsewhere with respect to causes of action arising from these effects, unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable. (*Hanson v. Denckla* (1958) 357 U.S. 235; *McGee v. International Life Ins. Co.* (1957) 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223; *Dahlberg Co. v. Western Hearing Aid Center, Ltd.* (1961) 259 Minn. 330, 107 N.W.2d 381, *cert. den.* 366 U.S. 961; *Stephensen v. Duriron Co.* (Alaska 1965) 401 P.2d 423, *cert. den.* 382 U.S. 956; *cf. Travelers Health Assn. v. Virginia* (1950) 339 U.S. 643, 705 S.Ct. 927; *Jeter v. Austin Trailer Equip. Co.* (1953) 122 Cal.App.2d 376, 381, 265 P.2d 130; *see* RESTATEMENT (SECOND), § 37; UNIFORM ACT § 1.03(4) ("causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state"), (6) ("contracting to insure any person, property, or risk located within this state at the time of contracting"); *Jurisdiction: Current Problems and Legislative Trends* (1959) 44 Iowa L.Rev. 247; *Diverse Systems and Principles of Jurisdiction* (1959) 53 Am.Soc.Int. L.Proc. 170; *Transient Jurisdiction—Remnant of Pennoyer v. Neff* (1960) 9 J.Pub.Law 281; Scott, *Hanson v. Denckla* (1959) 72 Harv.L.Rev. 695.) When jurisdiction over an individual is based solely upon such act or omission, only a claim for relief arising from such act or omission may be asserted against the individual. *(Ibid.)*

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As stated in RESTATEMENT (SECOND), § 37, Comment *a*:

> **A state has a natural interest in the effects of an act within its territory even though the act itself was done elsewhere. The state may exercise judicial jurisdiction on the basis of such effects over the individual who did the act, or who caused the act to be done, provided that the nature of these effects and of the individual's relationship to the state are such as to make the exercise of jurisdiction fair to the individual and reasonable from the standpoint of the international and interstate systems. . . .**
>
> **There are three possible situations: (1) the act was done with the intention of causing effects in the state; (2) the act, although not done with the intention of causing effects in the state, could reasonably have been expected to do so; and (3) the act was not done with the intention of causing effects in the state and could not reasonably have been expected to do so. These three situations will be discussed in the order stated.**
>
> **The act may have been done with the intention of causing effects in the state. If so, the state may exercise the same judicial jurisdiction over the actor, or over the one who caused the act to be done, as to causes of action arising from these effects as it could have exercised if these effects had resulted from an act done within its territory. . . . So one who intentionally shoots a bullet into a state is as subject to the judicial jurisdiction of the state as to causes of action arising from the effects of the shot as if he had actually fired the bullet in the state. Similarly, an insurance company which solicits through the mails the purchase of an insurance policy and thereafter mails the insured premium notices and the like is as subject to the judicial jurisdiction of the state as to causes of action arising from the policy as if it had sent an agent into the state to solicit the policy and to present the premium notices to the insured.** [*McGee v. International Life Insurance Co., supra*; *cf. Travelers Health Association v. Virginia, supra.*]
>
> **The act may not have been done with the intention of causing effects in the state but could reasonably have been expected to do so. Whether the state may exercise judicial jurisdiction in such a situation depends upon a variety of factors, including the extent of the relationship of the state to the defendant and to the plaintiff, the**

> nature and quality of the effects resulting from the act, and the degree of inconvenience which would result to the defendant from being forced to stand suit in the state on the particular cause of action. The greater the defendant's relationship to the state, the greater is the likelihood that the state may exercise judicial jurisdiction over him as to causes of action arising from the effects of the act in the state. . . . So if the defendant does business in the state, or solicits business extensively in the state, or if a substantial quantity of goods manufactured by him are sold in the state, there is a greater likelihood that the state may exercise judicial jurisdiction over him as to causes of action arising from the effects in the state of an act done by him outside the state than if the defendant did not have this relationship to the state. This is so even though the defendant's relationship to the state is not related in any way to the act or to such of its effects i . the state as are involved in the suit. The plaintiff's relationship to the state is also material. The greater is the extent of this relationship, the greater is the interest of the state in the plaintiff and consequently the more appropriate it will be that the state should be in the position to try the case in its courts. On the other hand, if the plaintiff has little or no relationship to the state, the defendant's relationship to the state must be correspondingly greater to give the state a sufficient interest to justify trial of the case in its courts. Another factor of significance is the nature and quality of the effects which occur in the state. The state may exercise judicial jurisdiction over the defendant if the effects which could have been anticipated and which actually occurred are of a sort highly dangerous to persons or things. . . .
>
> Finally, there will be situations where the act was not done with the intention of causing effects in the state and where the defendant had no reason to suppose that his act outside the state would result in effects within the state. In these circumstances the state is unlikely to have judicial jurisdiction over the defendant unless both the plaintiff and the defendant have an extensive relationship to the state. [Citations supplied; *cf. Hanson v. Denckla, supra.*]

Some actions, such as defamation, affect interests of a defendant that are protected by the First Amendment of the United States Constitution. For a state to have judicial jurisdiction over such actions, it may be that the defendant must have a closer relationship to the state, or have caused effects of a more substantial nature in the state, than would otherwise be required. . . .

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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1714

CARLSBERG MOBILE HOME PROPERTIES, LTD. — '72,
Petitioner,

vs.

HARPER SIBLEY, JR. and THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of California.

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Respondent Harper Sibley, Jr. ("Sibley") opposes the petition for writ of certiorari of Carlsberg Mobile Home Properties, Ltd. — '72, a limited partnership ("Carlsberg"). The decision of the California Supreme Court in this case was correct and Carlsberg has not shown in its pending petition any reason why this Court should review that decision. Moreover, the California Supreme Court decision interpreted and applied state law, thus resting on adequate and independent state grounds. This Court, therefore, lacks jurisdiction.

Statement of the Case.

Statement of Facts.

In December 1974, Carlsberg filed an action in the Los Angeles County Superior Court against Sibley and others. Carlsberg alleged that the other defendants had breached an agreement relating to the operation of mobile home parks *in Georgia* and that Sibley had breached a guaranty relating to said agreement. Sibley was served by certified mail in Florida. Appearing specially, Sibley moved the Superior Court, pursuant to California Code of Civil Procedure §418.10(a)(1), for an order dismissing the action for lack of personal jurisdiction. As shown by Sibley's affidavit filed in support of the motion, Sibley does not reside in California, has no properties here, and performed no act in or relating to California in respect of the matters alleged in the complaint.

The complaint, in pertinent part, alleged:

1. Carlsberg, doing business in the State of California, entered into a limited partnership agreement with defendant Sunrise Lakes, Inc., a Georgia corporation ("Sunrise"), which formed defendant MTA-CMHPL, Ltd. ("MTA"), a limited partnership, with Sunrise as the sole general partner and Carlsberg as the sole limited partner.*

2. The principal place of business of the newly formed limited partnership, MTA, is in the State of Georgia. Under the limited partnership agreement, MTA was to acquire and operate two mobile home parks, both of which are located in Georgia.

---

*Carlsberg contributed to this venture real property located in Georgia and Sunrise contributed a promissory note as well as a promise to manage and control MTA's assets.

3. Sunrise is to make monthly payments to Carlsberg pursuant to the limited partnership agreement. Sibley executed *in Florida* a written guaranty of Sunrise's performance.

4. Carlsberg, the alleged beneficiary of this guaranty, claims a breach thereof by Sibley and seeks to force Sibley to defend in California an action brought on the guaranty.

The uncontradicted affidavit of Sibley shows that his *only* connection with the matters alleged in the complaint is that he signed the guaranty. It shows, further, that Sibley did so *in the County of Monroe, Florida* in response to the request of defendant Peter Thun who brought the guaranty to Florida to present to Sibley. After signing the guaranty and having his signature acknowledged there, Sibley handed the document to Peter Thun *in Monroe County, Florida*. Sibley did not take or send the guaranty to Carlsberg in California or request Thun to do so. Indeed, there is no evidence that Sibley knew that the guaranty would be taken or sent to California by Thun or that it would induce action by Carlsberg in California.

Sibley's affidavit also shows that he is a resident of Florida, that he has never been a resident of California, that he does not own any real or personal property in California, and that he does not have any business interest or connection in California. Moreover, Sibley has not been physically present in the State of California since he was there for a day or so in January, 1973, to attend a Super Bowl game. Sibley's sole contact with the State of California—wholly unrelated to this action—is in a fiduciary capacity, in that he is one of a number of trustees

of a testamentary trust created by the will of his father, which trust owns a ranch in Cambria, California.

The *only* evidence presented by Carlsberg in opposition to Sibley's motion to dismiss was an affidavit which asserted that Sibley's guaranty induced Carlsberg to enter into the transaction with the other defendants and Carlsberg would not have executed and performed the limited partnership agreement without it.

The Decision by the California Supreme Court.

The California Supreme Court stated that this case presented the question whether California courts may constitutionally assert jurisdiction over a nonresident individual solely by reason of his execution outside of California of a guaranty regarding payment of monies to a California entity and his alleged breach thereof. That court concluded that, under the circumstances in this case—where the guaranty related to an enterprise operating solely *in Georgia* and was executed *in Florida* by a guarantor who had no other connection with the transaction—the guaranty transaction was not a sufficient basis on which to sustain personal jurisdiction over the nonresident guarantor. Thus, the action was ordered dismissed as against Sibley.

In so deciding, the California Supreme Court held that "the mere causing of 'an effect' in California . . . is not necessarily sufficient to afford a constitutional basis for jurisdiction; notwithstanding this 'effect' the imposition of jurisdiction may be 'unreasonable.'" If unreasonable, jurisdiction over a non-resident is lacking.

The California Supreme Court further held that in a case such as this, where the assertion of jurisdiction

is based on a single act of an out-of-state defendant which took place out-of-state, the exercise of jurisdiction would be constitutionally *unreasonable* because Sibley, by merely executing *in Florida* a guaranty relating to the operation of mobile home parks *in Georgia*, had not purposefully availed himself of the privilege of conducting activities in California, thus invoking the benefits and protection of its laws. The Court observed that the economic activity here involved is not the subject of special California legislation, a factor which, when present, may be deemed significant in determining the reasonableness of jurisdiction. The court held that California has no special interest in regulating the transaction involving Sibley and Carlsberg, especially since the transaction solely relates to a *Georgia* enterprise. Accordingly, it held:

> Thus, we conclude Petitioner's (Sibley) relationship to California, and the effects thereby caused in California, make the exercise of jurisdiction unreasonable in the present case.

ARGUMENT.

This Court Lacks Jurisdiction.

Carlsberg asserts jurisdiction under 28 USC §1257 (3), contending the issue is whether California could assert personal jurisdiction over Sibley without violating the due process clause of the Fourteenth Amendment, United States Constitution.

The standard for personal jurisdiction in California, as applied by the California Supreme Court, is found in California Code of Civil Procedure §410.10, which provides:

> A court of the state may exercise jurisdiction on any basis not inconsistent with the Constitution *of this state* or of the United States. (Emphasis added.)

The California Supreme Court stated that Section 410.10 manifests an intent to exercise the broadest possible jurisdiction, limited only by constitutional considerations. The Court then considered the recognized bases for jurisdiction in California as discussed by the California Judicial Council in its comment to Section 410.10.*

The California Supreme Court applied the facts of this case to Section 410.10 as analyzed by the Judicial Council comment and as interpreted by California case law. The Court distinguished the present case from other California cases upholding jurisdiction over non-resident defendants, concluding that jurisdiction over Sibley in California would be unreasonable and constitutionally impermissible.

---

*The comment is appended as Exhibit C to Carlsberg's petition.

The California Supreme Court did not say explicitly whether it was deciding the case on the basis of California law—*i.e.*, the Court's interpretation of Section 410.10—the California Constitution, the United States Constitution, or all three. Its decision was concerned primarily with the report of the California Judicial Council and with California cases on jurisdiction. Thus, it would appear that two independent grounds for the decision by the California Supreme Court were that the assertion of jurisdiction over Sibley would violate Section 410.10 and would violate the California Constitution's notions of reasonableness and due process.

It is firmly established that where a state court decision rests on adequate and independent state grounds, as here, this Court lacks jurisdiction. As held in *Herb v. Pitcairn,* 324 U.S. 117, 125, 65 S.Ct. 459, 463 (1945):

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. [Citations omitted] The reason is so obvious that it is rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction.

Jankovich v. Indiana Toll Road Commission, 379 U.S. 487, 489, 85 S.Ct. 493, 494 (1965), quoting from an earlier decision, held:

> It is undoubtedly "the settled rule that where the judgment of the state court rests on two grounds, one of which is federal and the other

nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment."

In further amplifying this principle, *Lynch v. People of New York ex rel. Pierson,* 293 U.S. 52, 54-55, 55 S.Ct. 16, 17 (1934), held:

> It is essential to the jurisdiction of this Court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. [Citations omitted] Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. [Citations omitted.]

Accord, *Buck v. People of the State of California,* 343 U.S. 99, 72 S.Ct. 502 (1952); *Durley v. Mayo,* 351 U.S. 277, 76 S.Ct. 806 (1956); *Black v. Cutter Laboratories,* 351 U.S. 292, 76 S.Ct. 824 (1956).

Here, the California Supreme Court decision appears to have rested, at least in substantial part, on the grounds that jurisdiction over Sibley in California would violate Section 410.10 and the California Constitution. This is shown by the Court's detailed reference to

the California Judicial Council comment and to California case law. The California Supreme Court fully discussed what, under California law, must exist before jurisdiction over a non-resident can be deemed reasonable. Under those standards, jurisdiction over Sibley was found to be unreasonable. Because these state grounds are independent of any federal ground that might also have been relied upon and are adequate to support the judgment, this Court lacks jurisdiction in the premises.

Certainly, it does not appear *affirmatively* from the record that the California Supreme Court based its decision *solely* on its interpretation of the federal Constitution. Carlsberg has not met its burden of proving federal jurisdiction pursuant to 28 USC §1257(3) and the petition must be denied.

The Instant Petition Does Not Raise Any Issue Deserving of Consideration by This Court.

Pursuant to Rule 19(1)(a) of the Supreme Court Rules, certiorari is granted only when a state court has decided a federal question of substance not previously determined by the Supreme Court or where the state court has decided the federal question in a way probably not in accord with applicable decisions of the Supreme Court. Neither criterion is satisfied here.

The Purported Federal Question of Substance Has Been Fully Determined by This Court.

No new or novel issue has been raised by Carlsberg in its petition. Even assuming that the California Supreme Court decision was based solely upon its interpretation of the federal due process clause, the issue is one fully considered and often decided by this Court.

Pennoyer v. Neff, 95 U.S. 714 (1877), *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154 (1945), *Hanson v. Denckla,* 367 U.S. 235, 78 S.Ct. 1228 (1958), and *McGee v. International Life Ins. Co.,* 355 U.S. 220, 78 S.Ct. 199 (1957), all dealt with this issue, namely the extent to which a state can subject an out-of-state person to its jurisdiction and the minimum contacts necessary before such assertion of jurisdiction is reasonable and constitutionally permissible.

To the extent, if any, that the California Supreme Court decided this case on Fourteenth Amendment grounds, the Court applied the principles laid down by this Court in the above cases in finding that Sibley did not have sufficient minimum contacts with California to justify jurisdiction. No decision of a federal question of substance not previously determined by this Court was made.

The California Decision Was in Accord With Applicable Decisions of This Court.

Sibley's affidavit showed that he signed the guaranty *in Florida,* handed it to Peter Thun there, and had *no other contacts whatever* with the transactions alleged in the complaint. Moreover, the limited partnership agreement, the performance of which Sibley guaranteed, shows that the limited partnership that was created has its principal place of business *in Georgia* and was created to operate two mobile home parks *there.* This agreement makes no mention that Carlsberg was a resident of California or even does business there and neither the agreement nor the guaranty begin to hint that Sibley would have to perform any act in California.

There was no showing in the record that Sibley, when he signed the guaranty, intended to induce any action in California or had any reason to anticipate such action would follow. Nor did Sibley have any reason to believe that enforcement of the guaranty would be sought in California; yet, Carlsberg sought to do just that in disregard of the notions of fairness and due process guaranteed Sibley by the United States and California Constitutions.

The facts in this case, insofar as they affect Sibley, show only that he signed a guaranty *in Florida* involving an enterprise *in Georgia.* The mere fact, without more, that a California resident, Carlsberg, was the apparent beneficiary of this guaranty does not allow Carlsberg to pursue its remedies against Sibley in California. Sibley did no business in California vis-a-vis Carlsberg, nor did he ever commit any acts in California or intend to cause an effect there pursuant to the transaction alleged in the complaint.

The personal jurisdiction of California over Sibley must be found in the activities *of Sibley*—not others—and Carlsberg must show that *Sibley* was so connected with California as to satisfy the constitutional requirements of personal jurisdiction. *Hanson v. Denckla, supra; McGee v. International Life Ins. Co., supra; Buckeye Boiler Co. v. Superior Court,* 71 Cal.2d 893 (1969); *Arnesen v. Raymond Lee Organization, Inc.,* 31 Cal.App.3d 991 (1973). The record here fails to adequately connect Sibley with California.

The California Supreme Court stated one of the recognized bases for jurisdiction arises when a defendant has caused an "effect" in the state by an act elsewhere. *Quattrone v. Superior Court,* 44 Cal.App.3d 296

(1975); *McGee v. International Life Ins. Co., supra.* Carlsberg's sole contention is that Sibley's signing of the guaranty in Florida caused an effect in California, namely that it caused Carlsberg, a California resident, to enter into the transaction. The true fact is, however, that Sibley's signing of the guaranty caused an effect *in Georgia,* namely that Carlsberg and the other defendants entered into an agreement to operate mobile home parks there.

The California Surpeme Court correctly stated that the mere causing of an "effect" in California is not necessarily sufficient to afford a constitutional basis for jurisdiction. The test is still whether the imposition of such jurisdiction would be unreasonable and offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington, supra.*

The California Supreme Court further correctly stated that the record fails to disclose that Sibley purposefully availed himself of the privilege of conducting business in California or of the benefits and protection of California laws as required by *Hanson v. Denckla, supra.* The record also does not indicate that Sibley would derive any economic benefit as a result of his guaranty or the transaction to which it related. Thus, the California Supreme Court concluded that Sibley's contacts with California were too minimal to make jurisdiction reasonable.

In contrast, *McGee v. International Life Ins. Co., supra,* held that the insurance company defendant was subject to suit in California *because it had affirmatively sought out a California resident and initiated a transaction with him by a communication which the defendant sent from Texas to California.* As stressed in *Hanson*

v. Denckla, supra, there was an affirmative act by the defendant in *McGee* that brought it into contact with California and made personal jurisdiction in California reasonable. The *McGee* situation must be contrasted with the facts here where Sibley did nothing more than sign the guaranty *in Florida* relating to a *Georgia* enterprise. There is no evidence in the guaranty, the limited partnership agreement, or anywhere else, that Sibley ever knew or should have known that his signing of the guaranty would require him to perform any act in California, much less to litigate any dispute in California.

Indeed, the guaranty which Sibley signed did not call for performance by *any* party in California. Rather, the limited partnership agreement and the guaranty related to the operation of mobile home parks *in Georgia.* Thus, Sibley never availed himself of the privilege of conducting any activity in California and in the absence of his having done so, the assertion of jurisdiction by California was properly found to be so unreasonable as to be constitutionally impermissible.

The California Supreme Court also held that whether a state has passed special legislation relating to the subject matter of the action is significant in determining the reasonableness of jurisdiction over an out-of-state defendant. The California court specifically referred to *McGee v. International Life Ins. Co., supra,* where jurisdiction was upheld, in part, because California had enacted special legislation manifesting an exceptional interest in regulating activities by foreign insurance companies, such as the defendant therein. Similarly, in *Quattrone v. Superior Court, supra,* jurisdiction over a nonresident defendant was upheld largely because the end result of defendant's alleged conspiratorial con-

duct was the issuance of shares of stock, a subject of special California regulation.

In this case, Carlsberg contributed to the venture its holdings of *Georgia* land so that mobile home parks could be operated *in Georgia*. The California Supreme Court correctly held that there are no aspects of this transaction which are subject to special regulation in California or in which California has otherwise manifested exceptional interest. Certainly, Georgia has a greater interest in regulating the transaction. Carlsberg is suing on a breach of contract theory in regard to the operation of a Georgia enterprise. Compared to Georgia, California has little interest, if any, in regulating the relationship among the parties, thus another reason for dismissing the action.

Conclusion.

In this case, Carlsberg insisted on having the gratuitous guaranty of a noninterested nonresident and got it. There is nothing unfair in requiring Carlsberg to go to Florida or Georgia to enforce the guaranty. The California Supreme Court fully agreed.

Respondent Harper Sibley, Jr. respectfully submits, therefore, that the Petition for Writ of Certiorari should be denied.

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